STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion	))	
	)	00-0596
Revision of 83 Ill. Adm. Code 730	)	

REPLY TO BRIEFS ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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INTRODUCTION

The Staff of the Illinois Commerce Commission ("Staff"), by its counsel and pursuant to Section 200.830 of the Rules of Practice before the Illinois Commerce Commission, submits its reply to briefs on exceptions to the Administrative Law Judges' Proposed Order ("Proposed Order").

The Commission should reject the arguments, to the extent set forth herein, of People of the State of Illinois and the Citizens Utility Board (jointly referred to as "CUB/AG"), Verizon North Inc. and Verizon South Inc.' (jointly referred to as "Verizon"), and Illinois Bell Telephone Company ("Ameritech " or "AI"), Allegiance Telecom of Illinois, Inc., McLeodUSA Telecommunications Services, Inc. and RCN Telecom Service of Illinois, Inc. (jointly referred to as "CLEC Coalition"), City of Chicago ("City"), Illinois Independent Telephone Association Brief on Exceptions ("IITA"), and WorldCom, Inc. with respect to revisions to 83 Illinois Administrative Code Part 730 as addressed herein, and adopt Staff's exceptions and proposed language as set forth below and in its Brief on Exceptions.

ARGUMENT

I. 730.105 & 730.110 Waiver & Blanket Exemptions for CLECs

WorldCom filed a BOE advocating their position that § 730.110 should contain a "limited" exemptions available for those CLECs able to show that "the standard from which it seeks a waiver should not apply because compliance with the standard is outside of the control of the carrier." WorldCom BOE at 1. WorldCom maintains that its proposed "blanket" exemption would "promote administrative efficiency" because the

waiver provisions already contained in the proposed Part 730 would "invite[] a slew of waiver petitions by CLECs." *Id.*

Allegiance Telecom of Illinois, Inc., McLeodUSA Telecommunications Services, Inc. (collectively, "CLEC Coalition"), likewise, filed a CLEC Coalition BOE advocating, in large part, their position on waivers. The CLEC Coalition, however, is not advocating a "blanket" waiver, but, rather, a permanent or temporary waiver on a case by case basis, which would only cover those services "that the CLEC provisions using the wholesale services or UNEs or an ILEC." CLEC Coalition BOE at 6-7. The CLEC Coalition maintains that its position would provide "clarity" within Part 730. CLEC Coalition BOE at 8.

First, in response to both WorldCom and the CLEC Coalition, Staff would, again, point out that the Commission has concluded that Part 730 should protect end users, and to accomplish that point, it should apply to all carriers, "including both ILECs and CLECs." *Order*, Docket No. 98-0453, at 6 (Feb. 9, 2000). The Commission has also already found that "the imposition of Part 730 on all carriers is competitively neutral and does not act as [an] entry barrier to the telecommunications market." *Id.* The Commission should maintain this position, because the waiver provision still allows a CLEC the opportunity to demonstrate to the Commission its need for a waiver.

In response to WorldCom, Staff points out that the exemptions WorldCom seeks in its BOE cannot be credibly characterized as "limited." In fact, these are the same "blanket" exemptions that the Proposed Order has already rejected.

Staff, moreover, again points out that its proposed waiver language in Part 730.110, as adopted by the Proposed Order, allows a CLEC to obtain either a

temporary or permanent waiver whenever they can demonstrate that the rule they want waived is "unreasonable or unnecessarily burdensome." In fact, as Staff has noted before, WorldCom witness Ms. Spears acknowledged that there is little difference between a CLEC going to the Commission and demonstrating "no direct control," under WorldCom's proposal, or demonstrating "unreasonable or unnecessarily burdensome" under Staff's proposal. Tr. 338; Staff Initial Brief, at 20; Staff Reply Brief, at 18. Under either proposal, a CLEC would still have to petition the Commission for relief, inviting the same "slew" of waiver petitions under either proposal; so WorldCom's proposal adds is no more administratively efficient than Staff's proposal.

In response to the CLEC Coalition, Staff would like to reemphasize a few points that appear to have been overlooked by the CLEC Coalition. First, while the CLEC Coalition went into great detail listing the shortcomings of Part 732 to adequately reimburse them for ILEC wholesale shortfalls (CLEC Coalition BOE, at 8-9), they failed to note that they all have interconnection agreements in place that direct wholesale service quality levels and also contain remedy plans to enforce them. Staff Ex. 6.0, at 5.

The CLEC Coalition, moreover, ignores the fact that Part 730 performance measure fines are not self-effectuating. Staff Initial Brief, at 21-22; Staff Reply Brief, at 18. Any penalty action, consequently, taken against any CLEC under Part 730.120 would likely be based upon a Staff recommendation, which would more than likely have to cite the ILEC's service quality performance that was the root cause of any problem. *Id.* The CLEC Coalition would also be afforded all the due process protection and proportionate penalty protection provided in Part 730.120. *Id.*

Finally, the CLEC Coalition cites to the Initiating Order as support for its waiver language. The CLEC Coalition states that:

> adding proposed subsection (d) would provide clarity to the Rule by making it explicit that the circumstances referenced in subsection (d) are a basis upon which the Commission can grant a waiver. This would be consistent with one of the Commission's stated purposes in initiating this docket, namely, to 'determine whether the standards for local exchange telecommunications service are clear.'"
>
> *Id*. at 8.

The CLEC Coalition, however, failed to provide the Commission with the remainder of the last sentence that it quotes. The rest of the relevant part of that sentence reads: "to determine whether the standards for local exchange telecommunications service are clear *as well as consistently applied and reported by all local exchange carriers*." Initiating Order at 2 (emphasis added). The CLEC Coalition left out the remainder of that sentence for an obvious reason: it undermines their argument for a blanket waiver. It is Staff's position, accordingly, that the Proposed Order's conclusions regarding proposed Part 730.110 waiver language strikes an appropriate balance between the goals established in the Initiating Order and of clarity and consistent application of Part 730 to all local exchange carriers.

Finally, Staff points out that the PUA itself has a general waiver of rules provision that allows a carrier to petition the Commission for the waiver of the application of any rule promulgated under the PUA. See 220 ILCS 5/13-514. Although the Commission may investigate the matters contained in such a petition, §13-513 also allows the Commission to forego an investigation, which would allow the waiver to automatically go into effect 30 days after the petition is filed. *Id*. This general waiver provision thereby provides the CLEC Coalition a reasonable avenue by which it can protect its interests

Accordingly, for the reasons set forth above and in its prior briefs, Staff recommends that the Commission adopt the Proposed Order's conclusions regarding proposed Part 730.110 waiver language.

II. 730.105 & 730.510 The Definition of "Abandoned Call" and Abandoned Call Reporting requirement Should Remain in the Rule

In its exceptions A(2) and E, Verizon proposes that the definition of "Abandoned Call" be deleted from §730.105 (Verizon BOE at 2), and that the requirement to measure abandoned calls in Appendix A §730.510(b)(3)(D) (Verizon BOE at 8) also be deleted. The Commission should deny both of Verizon's exceptions.

Verizon argues that since the Proposed Order determined that "the measurement of abandoned calls would not necessarily lead to better service quality", that the definition of abandoned calls, as well as §730.510(B)(3)(D), should be stricken from Appendix A. *Id.* Staff disagrees with Verizon, since carriers already report abandoned call rates to the Commission, and Staff uses this information to improve customer service in Illinois. Carriers first reported abandoned call rates in 2001. Staff Ex. 4.0 at 11. For those carriers who already report this measure, there is no significant additional burden placed upon them to continue to do so; for those carriers who are unable to provide the information, Staff accepts statements from the carrier asserting that they did not have the means to measure abandoned calls at that time. *Id.*

Furthermore, reporting the abandoned call rate provides Staff with a system of "checks and balance" relating to customer service. The abandon rate, used in conjunction with the answer time, provides Staff information that is necessary for Staff to approach carriers about customer service problems, and to monitor the

telecommunications' market in Illinois. Staff IB at 59. If the answer time is long, then the abandoned rate is usually high, therefore, if a company reports a low answer time, and a high abandon rate, something is a miss and warrants further Staff investigation. *Id.* at 15-16. Obtaining this information, allows Staff to work with the carriers to ensure that consumers receive an adequate level of telecommunications service.

Additionally, the Commission has established an abandoned call rate and reporting requirements for electric utilities. In Docket 99-0580, Revision of 83 Ill. Adm. Code Part 410, Standards of Service for Electric Utilities, the Commission found that the average answer time and abandoned call rates were reasonable and necessary for a timely reporting of conditions or equipment problems. Therefore, it would be reasonable for an abandoned call rate to be set for telecommunications carriers.

For the foregoing reasons, the definition of abandoned call and the reporting requirement in §730.510(B)(3)(D), should remain in Appendix A, and Verizon's proposals should be rejected.

III. 730.105 Definition of "Emergency Situations"

Staff agrees with Verizon and Ameritech that the definition of "Emergency Situations" should ultimately be consistent with the definition adopted in Part 732. Staff, however, disagrees with Verizon and Ameritech that the Proposed Order should, at this time, adopt a 90 day exemption for work stoppages. As both Ameritech and Verizon are well aware, and as both Staff and the Illinois Brotherhood of Electrical Workers pointed out in their BOEs,[1] the Commission has opened a new docket in Part 732, specifically to

[1] The IBEW's "BOE" is labeled as a Motion attached to the IBEW's Petition For Leave To Intervene And For Leave To File Motion Instanter, filed in this proceeding on August 20, 2002. The IBEW brief, however

address the work stoppage exemption issue. Staff, consequently, for all the reasons noted in its BOE, recommends that the Commission decline to adopt a work stoppage exemption at this time and, instead, rely upon its right to amend Part 730 to be consistent with the ultimate outcome in Part 732. *See* Staff BOE at 5-7.

IV. 730.120 Penalties

Ameritech contends that the Commission does not have authority to order penalties independent of the §13-305 caps. In support of its position, Ameritech makes three basic arguments. First, Ameritech argues that this proceeding was initiated under §§13-512 and 8-301 of the PUA, and that nothing in those PUA sections provides for fines or civil penalties. Ameritech BOE at 21. Second, Ameritech contends that, even if §13-712 applies here, that it "does not 'otherwise provide' for civil penalties beyond the limits of §13-305." *Id*. at 22. Finally, Ameritech contends that without the penalty amount limits contained in §13-305, §13-712 "itself would be unlawful" leaving the Commission "with no lawful penalty authority at all." *Id*. at 23.

Regarding Ameritech's first contention that the Initiating Order does not provide for fines or civil penalties, Staff points out that the Initiating Order, in fact, does expressly order, in relevant part, that:

> [A] proceeding be initiated to review 83 Ill. Adm. Code 730 to determine whether . . . Part 730, as currently written, has sufficient penalty mechanisms associated with it to modify a local exchange carrier's performance, ...

Ameritech's point, that this proceeding was initiated under §13-512 and that the current Part 730 was adopted under §8-301 and that neither of those PUA sections

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named, has the practical effect of a BOE.

provide for fines or civil penalties, is true, but immaterial. In fact, the AG filed a Motion to Temporarily Stay Schedule to File Testimony Pending Close of the Legislative Session for the specific purpose to consider the impact of PA 92-0022, which enacted § 13-712. See Motion to Temporarily Stay Schedule to File Testimony Pending Close of the Legislative Session (May 10, 2001). The Commission granted the AG's Motion in May 21, 2001. The parties, moreover, conducted additional workshops to specifically consider the impact of Public Act 92-0022. Staff IB at 1; Tr. 70-71. Finally, the proposed Part 730 as amended specifically states that it is implemented under the authority of § 13-712. We agree with the AG, however, that the discussion of statutory authority on page three of the Proposed Order should reflect the authority identified in the specific language of the rule attached to the Proposed Order. See CUB/AG Brief on Exceptions at 2-3.

Ameritech, subsequently, cannot credibly argue that this proceeding or rulemaking excludes §13-712. Moreover, for Ameritech to ignore the procedural history of this rule, which includes addressing the impact of PA 92-0022, is disingenuous because Ameritech's argument is not just based upon the Initiating Order in this proceeding but also upon the history of the rule. ("This is clear from the history of the rule, which substantially predates Section 13-712, and from the Commission's initiating order in this proceeding, which clearly identifies this as a review of the existing rule pursuant to section 13-512 of the Act, not a rulemaking under Section 13-712." AI BOE at 22).

Ameritech contends that because Part 730 was originally adopted under §8-301, which does not provide for fines or penalties, that it consequently is precluded from

providing fines or penalties other than those under §13-305. AI BOE at 22-23. Staff notes that §8-301 is a *general* service quality standard provision for all public utilities. As stated above, Part 730 was expressly revised to account for P.A. 92-0022, which included §13-712. Section 13-712 is a *specific* code section regulating service quality standards for telecommunications services, and *specifically* provides for civil penalties in §13-712(c) for instances where a carrier fails to meet its service quality obligations. As Ameritech itself notes, in a slightly different context: "it is a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or another act, which both relate to the same subject, the specific provision controls and should be applied." *People v. Villareal*, 152 Ill. 2d 368, 379 (1992). The Proposed Order found §13-712 to apply to Part 730, and §13-712(c) clearly is the more specific provision relative to §13-305.

Regarding Ameritech's third contention, that without the penalty limitations contained in § 13-305, or standards by which such limits could be determined, § 13-712 "itself would be unlawful" leaving the Commission "with no lawful penalty authority at all" (Ameritech BOE at 23), Staff points out that Ameritech utterly ignores, although Ameritech accurately quotes it, the plain language of § 13-712(c), which provides:

> The Commission shall promulgate service quality rules for basic local exchange service, which may include fines, penalties, customer credits, and other enforcement mechanisms. In developing such service quality rules, the Commission *shall consider*, at a minimum, the carrier's gross annual intrastate revenue; the frequency, duration, and recurrence of the violation; and the relative harm caused to the affected customer or other users of the network. In imposing fines, the Commission shall take into account compensation or credits paid by the telecommunications carrier to its customers pursuant to this Section.

All of the language of § 13-712(c), other than the first sentence, contains limitations that the Commission must consider prior to imposing fines or penalties on a carrier. What § 13-712(c) does not contain is a "cap" on the amount of the penalties. As is clear from the Initiating Order and the express language of § 13-712(c), the reason there is no cap on the amounts of fines or penalties is that the fines or penalties must be sufficient to modify a carrier's service quality performance. A sufficient level of fine or penalty, consequently, will be different for each carrier and situation, which is why § 13-712(c) requires the Commission to consider "the carrier's gross annual intrastate revenue; the frequency, duration, and recurrence of the violation; and the relative harm caused to the affected customer" prior to imposing a fine or penalty, rather than imposing an arbitrary amount as a cap. What is equally clear from Ameritech's arguments is that it wants the amount of fines or penalties to be capped. Section 712, however, contains no such caps on fines or penalties and the Commission is precluded from imposing limitations that are not prescribed by the General Assembly. *Gray Panthers v. Dept. of Ins.*, 110 Ill. App. 3d 971, 973 (1st Dist. 1982) ("An administrative official must follow the expressed statutory mandate and may not put into the statute a limitation which the legislature did not prescribe.").

In sum, it is Staff's position that if the Commission believes that in order to meet the General Assembly's expressed objective, it may be necessary to impose penalties under § 13-712 that exceed the penalty caps of § 13-305, Staff believes that the Commission has both the express and implied authority to do so.

Staff, accordingly, supports the proposed Order's conclusions regarding the statutory authority to impose fines or penalties, recommends that the Commission adopt

the Proposed Order's current language and findings, and reject Ameritech's proposal to modify the Section IV(E)(4) of the Proposed Order.

V. 730.335 Network Interface Devices ("NIDS")

Ameritech contends that the Proposed Order's conclusions requiring the installation of external network interface devices ("NIDs") contains two fundamental flaws. First, Ameritech contends that the Proposed Order "completely ignore[s] the Commission's long-standing policy allowing internally installed NIDs to remain in place." Ameritech BOE at 2. Second, Ameritech, joined by IITA, both contend that the Proposed Order (i) "does not provide carriers with sufficient flexibility to complete the installation of NIDs in a manner that will be efficient and customer-friendly" or (ii) does not sufficiently recognize that compliance with the Proposed Order will be "cost prohibitive." *Id*; IITA BOE at 4. Staff disagrees with both contentions.

First, Staff disagrees with Ameritech that the Commission has a "long-standing policy" of permitting existing internal NIDs to remain in place. What Ameritech terms a "long-standing" Commission policy is actually an exception to the Commission policy that all NIDs should be placed on the outside of buildings so that all carriers and consumers themselves can easily access the NID. *See* Part 740.30(1) ("the demarcation point shall remain accessible to both the telephone company and the customer."); Staff Ex. 5.0, at 5.

In Docket No. 86-0278, the Commission ordered, among other things, that all existing customer installations that did not have an external combination protector/demarcation device were to be equipped with one within a 10-year period from

the date of the Order, with an exception for locations that were already equipped with an internal plug type demarcation device. *Order*, Docket No. 86-0278 at 3, 5. This is the 86-0278 *exception* to the Commission's policy to make all NIDs easily accessible. The 10-year deadline for this exception to the Commission's policy that all NIDs be external was subsequently extended for an additional five years by the Order in Docket 94-0431, leaving a current deadline of October 2002. *Order*, Docket No. 94-0431 at 3-4. LECs, consequently, had 15 years, under the exception to the Commission's policy, to comply with the Commission's policy of placing all NIDs externally. Presumably, Ameritech will fail to comply, and out of desperation it is now mischaracterizing an exception to Commission policy as the policy itself.

As noted before, Staff believes that the 86-0278 *exception* is out of date given both the requirements in Part 740.30 (1), referenced above, and the intent of TA 96 to move towards greater competition. Staff Ex. 5.0, at 4-5. Further, the Commission orders in both Dockets 86-0278 and 94-0431 gave the LECs an ample opportunity to seek a waiver if the LEC could not complete the NID installation program. Staff Ex. 5.0, at 6. To date, no LEC has sought a waiver. *Id.* Accordingly, there should be no compelling reason for this replacement program not to be complete, or near completion. *Id.*, at 6-7.

Moreover, even if Ameritech's interpretation of the Orders in Dockets 86-0278 and 94-0431 is accurate, there is no conceivable means for the Commission to grant them a reasonable transition period for changing to external NIDs those NIDs that were internally installed prior to September 30, 1987, because Ameritech has expressly admitted that they do not maintain the appropriate records to determine which locations

have externally mounted NIDs, which have internally mounted NIDs, or which locations have no appropriate NIDs at all. Ameritech Ex. 1.2 at 4.

Regarding Ameritech and IITA's second contention that the Proposed Order does not provide carriers with sufficient flexibility to complete the installation of external NIDs in a cost-efficient and customer-friendly manner, Staff would again point out that the fifteen year period the Commission set for LECs to install external NIDs offered a reasonable amount of time for LECs to avoid the financial impact of replacing NIDs as ordered by the Commission and to avoid the greater impact on customers by permitting the vast majority of replacements to occur within the context of a site visit scheduled to address a service outage or other maintenance. Staff Ex. 5.0, at 8. The Commission also, as noted above, provided LECs with the opportunity to seek a waiver if the harm of its replacement program was excessive. It is not now appropriate for a LEC to claim that the financial impact would be excessive because it failed to implement Commission orders. *Id.*

Accordingly, the Commission should accept the current language of the Proposed Order and §730.335, and should reject Ameritech's and IITA's proposed replacement language for section IV(H)(5) of the Order, as well as the language Ameritech proposes for subsection 730.335(g).

VI. 730.535(b) Payphone Equipment Should Remain a Variable in Calculating Out-of-Service for More than 24 Hours

The Proposed Order modified section 730.535(b) to include methodologies for calculating out-of-service troubles in a twenty-four hour period. Proposed Order at 43. In exception F of its BOE, Verizon recommends that one of the variables used in the

calculation methodology, variable "D", be deleted. Verizon BOE at 10. Variable "D" accounts for out-of-service conditions experienced by payphones. Additionally, Verizon proposes a statement of its position on the revisions to section 730.535, since the Proposed Order did not provide such a statement. *Id.* at 10-11. Staff does not object to the language Verizon proposes for "Verizon's Position", however, the Commission should reject Verizon's proposal to delete variable "D".

Removing variable D from the out-of-service >24 hours formula would potentially leave payphones out-of-service for extended periods of time. Section 730.535 requires 95% of all out-of-service troubles to be repaired within 24 hours. §730.535(a). There is no other provision that requires a carrier to repair a payphone within a set period of time. Under Verizon's proposal, there would be no set period of time in which payphones should be repaired, therefore, payphones that are out-of-service could be unusable for long periods of time without recourse by, or knowledge of, the Commission. This type of condition is against the public interest.

Accordingly, the Commission should deny Verizon's proposal to delete variable D from the formula in section 730.535(b)(2), and payphones should continue to be repaired within 24 hours, just like any other customer. *See* Staff IB at 66.

VII. 730.535(c), 730.540(d) & 730.545(h) The Rule Must be Modified to bo Consistent with Part 732, as Adopted by the Commission in Docket 01-0485

In its exception III, the CLEC Coalition proposes that the same twenty-four hour notice period used in Part 732, be used in Part 730 for premises visits related to clearing a trouble report (§730.535(c)), an installation (§730.540(d)), or a repair

appointment (§730.545(h)). Staff agrees with the changes proposed by the CLEC Coalition or the reasons set forth in its BOE.

Verizon takes exception to the last sentence of §730.545(h), and proposes that it be stricken and replaced. Verizon BOE at 12. Staff agrees with Verizon in concept, however, Staff prefers the language set forth in the CLEC Coalition's BOE.

Accordingly, for the reasons set forth above, Staff recommends that the Commission adopt the proposed replacement language in exception III of the CLEC Coalition's BOE, and reject the language proposed by Verizon.

VIII. 730.550 All Local Exchange Carriers Should Be Held Responsible for Notifying Staff of Network Outages

In its exception IV, CLEC Coalition argues that notification to the ICC of network outages, as stated in section 730.550, should be limited to incumbent local exchange carriers, instead of the local exchange carrier. CLEC Coalition BOE at 17. CLEC Coalition's proposed change should be denied, and the proposed Order should remain unchanged.

Staff proposed a new section for Part 730, section 730.550, which clearly states when a carrier needs to contact the ICC about an outage, and what information the carrier is to provide the ICC. Staff Ex. 1.0, Attach. 1.01 §730.550. The Proposed Order found in favor of Staff's proposal, which requires the local exchange carrier to contact the ICC when there is a major or minor outage, and provide a written report within thirty (30) days of the outage. *Proposed Order*, Appendix A §730.550.

In support of its position, CLEC Coalition argues that the CLEC "would not have timely access (if it has access at all) to the information necessary to submit reports to

the Commission." CLEC Coalition BOE at 17 (citing McLeodUSA Ex. 1.0 at 5). This argument is a re-packaging of an argument already addressed in the Proposed Order. In McLeodUSA witness Cox's direct testimony, he stated that "there will be instances where it will be difficult, if not impossible, for a LEC to know the percentage of customers affected." McLeodUSA Ex. 1.0 at 5.

The purpose of this reporting requirement is to set a reasonable guideline for the carrier to rely upon so that Staff is notified of outages sooner, rather than later. As Staff stated in its initial brief, it does not believe these estimates will consume a great deal of CLEC resources, and in fact, a carrier already performs such estimates for its own internal purposes so it can allocate resources for repairs. Staff IB at 83. Additionally, the carriers experience and knowledge places it in the best position to estimate the extent of the outage, however, the Staff recognizes that the nature of network outages dictates that the carrier would not be able to exactly determine the number of customers affected, but would have a "best guess" of that number. Given that "best guess" number, the carrier can determine when it needs to contact the Commission. Staff is not attempting to hold carriers liable for the accuracy of its estimates, but wants the carriers to rely upon reasonable estimates of the outage based on that carriers experience. Staff IB at 84.

Accordingly, the Commission should adopt the current language in section 730.550 of Appendix A, and reject the CLEC Coalition's proposed replacement language.

IX. Reporting Issues

A. 730.115(b) Disaggregation:

In its Brief on Exceptions, CUB/AG raises concerns regarding the proposed Order's verbatim adoption of the language in Section 13-712(f) which requires performance data to be disaggregated for each geographic area and each customer class for which the carrier internally monitored performance data as of a date 120 days preceding the effective date of PA 92-0022. CUB/AG BOE at 3-4. CUB/AG does not object to the principle underlying this statutory requirement, rather, they raise two other specific objections.

The first is that the Proposed Order's interpretation of the statutory requirement is too narrow. Essentially, CUB/AG interprets Section 13-712(g) to require disaggregation even by methods that the carriers do not already utilize if the performance data had been internally monitored as of 120 days preceding the effective date of PA 92-0022. *Id.* at 8. While Staff finds the CUB/AG interpretation plausible, Staff is not convinced that the intent of the statutory language was to require greater disaggregation than was required to permit the carriers to internally monitor performance data. In other words, if the carriers monitored data internally by customer class and by exchange, Staff would consider this the level of disaggregation that the carriers were utilizing for purposes of Section 13-712(f). If the internal monitoring were performed by customer class or by exchange, disaggregation on that basis would not be required.

The second CUB/AG objection is pragmatic and relates to the concern that the companies may "want to disregard their existing reporting and essentially ignore the disaggregation requirement." *Id.* at 5. CUB/AG argues that Part 730 should

affirmatively specify the level of disaggregation required of the major carriers and "in the absence of specific testimony to the contrary, the carriers should be presumed to maintain performance data on an exchange basis, and to disaggregate the data between business and residential classes." *Id.* at 7. CUB/AG also argues that "the rule adopted in this proceeding should incorporate this approach to disaggregation and put the burden on the [sic] those carriers to demonstrate that they do not disaggregate data to that level of detail." *Id.* CUB/Ag supports their arguments by pointing out a number of inconsistencies in the data request responses and testimonies of carriers.

Staff does not agree that a presumption should be adopted in this rule that disaggregation should be on an exchange and business and residential class basis. Staff's concern is that the record in this proceeding is not sufficient to warrant this presumption and further, that this presumption is contrary to Section 13-712(g). Staff, however, does agree that the burden is on the carriers to verify the disaggregation of their data and agrees also that the carriers are required to support their claims of disaggregation with certifications and supporting data. Staff therefore has no objection to a modification of the CUB/AG proposed language to require the carriers to demonstrate the disaggregation of their data and to identify the level of the geographic disaggregation and customer class that the carriers are required to maintain pursuant to the Rule. As a result, Staff proposes the following language:

Add to Section 730.115(b) as a second paragraph:

> Carriers shall disaggregate their performance data at least to the extent required pursuant to this Rule and Section 712(f) of the PUA and, within 30 days after the effective date of this Rule, shall provide to the Commission a certification by an authorized officer of the carrier specifying the disaggregation that is required as well as supporting documentation sufficient to demonstrate the required disaggregation (specifically

identifying the geographic and customer class disaggregation). The carriers shall bear the burden of proof with respect to the required disaggregation. Such certification and supporting documentation shall be delivered in a form that can be made publicly available and posted upon the Commission's website.

B. 730.115(c)

Both Verizon and Ameritech raise objections to Section 730.115(c) of Staff's rule, which essentially establishes certain reporting requirements for wholesale carriers that relate to Part 732 credits. AI BOE at 24-25; Verizon BOE at 2-4. First, Verizon argues that, in Docket 01-0485, the Commission has subsequently modified the reporting requirements identified in this Section creating certain inconsistencies between this rule and the Commission's Order in Part 732. Second, both carriers argue that this Section requires a wholesale carrier to report credits although the scope of Part 730 governs the retail carrier's relationship to its end user. Staff agrees. Part 732 adequately provides for this reporting. In addition, any additional wholesale reporting would be better raised in the context of Part 731, the wholesale service quality rulemaking. As a result, Staff recommends that Section 730.115(c) of Appendix A be deleted.

C. 730.540(d) and (e) Trouble Reports

In its Brief on Exceptions, CUB/AG also renews its recommendations that its more stringent reporting requirements regarding trouble reports, repeat trouble reports and installation trouble reports be adopted. CUB/AG BOE at 18-22. While Staff does not dispute the CUB/AG findings that the carriers are currently meeting or exceeding the standards proposed by Staff, Staff is not convinced that those standards must

necessarily be revised at this time to align with the carrier's performance. Thus, for the reasons set forth above, Staff recommends that the Commission adopt Sections 730.540(d) and (e) as currently stated in Appendix A.

D. Record Retention; Public Reporting; Adequacy of Service

In its Brief on Exceptions, the City of Chicago objects to the HEPO's findings regarding record retention, public reporting and adequacy of service requirements. City BOE at 1, 4, 6. In each case, the City argues that the record does not support any finding other than adoption of the City's position. ("The ALJ's rejection of the City of Chicago's proposal to include a clear five-year rolling retention period for records related to specific service quality failures and service standard violations is not supported by the record." City BOE at 1. "The HEPO's finding that Staff's proposed reporting requirements 'strike the correct balance between necessary information and regulatory burden' is not supported by the record." City BOE at 4. "The City of Chicago respectfully disagrees with the ALJ's apparent finding that the City did not establish an adequate basis for Commission action." City BOE at 6.) Staff disagrees with the City's assertions. In point of fact, an adequate record was developed with respect to these matters, and it is the City, unfortunately, that did not persuade parties or the ALJ to adopt its recommendations.

In the case of record retention, Staff does not dispute that stricter record retention requirements should be put in place. Staff has suggested only that Part 705, the rule regarding record retention, is from an administrative standpoint the appropriate vehicle for adoption of such recommendations. In its Brief on Exceptions, the City

appears to concede this point but argues that the current record retention requirements in Part 705 do not work. ("While the City of Chicago would agree that having one rule governing all record retention periods would be 'simpler' (and presumably effective) in theory, the record demonstrates that this current system does not work." City BOE at 2, footnote omitted.) Staff points out that neither the City nor any other party is precluded from raising these issues in an update of Part 705.

In the case of the City's recommendations regarding public reporting requirements, Staff remains confident in its position that the benefits to be obtained by the recommended reporting requirements are not justified at this time in light of the burdens upon the carriers. While Staff has not conducted a "formal" cost benefit analysis comparing costs of reporting requirements against benefits in obtaining more detailed information, Staff has conducted a careful examination of the testimony presented in this proceeding from all parties and has conducted an informal cost benefit analysis, weighing the anticipated benefits against burdens. Moreover, Staff questions the viability of obtaining any ascertainable and verifiable results from any "formal" cost benefit analysis. The data in any such formal analysis can be easily manipulated; variables can be excluded, all in an attempt to support the position of the party paying for the formal analysis. Staff's analysis determines the relative benefits and burdens in light of its judgment and expertise regarding the regulatory framework. It is completely inaccurate for the City to conclude that Staff's recommendation (which was adopted by the ALJ), is "simply the result of an agreement reached between Staff and the industry during workshops." Rather, it is the City that has failed to persuade any party to this proceeding that its recommendations are in the public interest.

Finally, in the case of the City's recommendations regarding Section 730.500 (Adequacy of Service), the City disputes the HEPO's finding that it did not establish an adequate basis for Commission action by somewhat inconsistently chastising the other parties for not adequately disputing the reasonableness of its recommendations. City BOE at 6. In addition, the City claims that this section of the rule is too vague because the Commission did not adopt objective criteria to support its requirements and instead relied upon a reasonable carrier standard. *Id.* at 7. Staff believes that its reasonable carrier standard will achieve the legislative goals identified by the City. Moreover, Staff points out that objective criteria, while they have the advantage of providing greater certainty for carriers, will not provide greater authority for Commission action but may actually provide arguments that the Commission's authority is limited by the objective criteria identified. As a result, Staff does not agree that objective criteria are required at this time but does not preclude the possibility that circumstances may change Staff's position in any update of this rule. Staff reiterates the arguments it made in its Initial Brief. In particular Staff notes that:

> "[t]he City's recommendation goes well beyond Section 13-712 of the Public utilities Act. Section 13-712(a) states: '[i]t is the intent of the General Assembly that every telecommunications carrier meet minimum service quality standards in providing basic local exchange service…' Requiring carriers to establish a Current Plan, Facility Analysis Plan and methods to investigate facility assignment and provisioning are more diagnostic, and are at a level of Commission oversight not needed at this time given the general level of service quality provided by carriers in Illinois. Staff Initial Brief at 51.

Accordingly, for the reasons set forth above, Staff recommends that the Commission adopt the "Commission Conclusion" sections for 730.115, 730.200 and

730.500 as currently stated in the Proposed Order, and reject the exceptions language proposed by the City of Chicago.

X. Change the Heading in Table of Contents for Section 730.550

The heading in the table of contents does not match the heading in the body of the rule. The heading of the body of the rule is more accurate, and therefore the table of contents should be changed to match.

Exception Language

Staff therefore proposes the following modification to the table of contents:

730.550 ~~Exchange Isolation~~ Network Outages and Notification

CONCLUSION

For all of the foregoing reasons, the Commission should reject the arguments of Verizon, CUB/AG, CLEC Coalition, IITA, City of Chicago, WorldCom and Ameritech, to the extent set forth herein, and adopt Staff's exceptions and proposed language, as proposed herein and in Staff's BOE.

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Respectfully submitted,

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